

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

THE WAGNER AGENCY,

Plaintiff,

V.

JOHNSON & JOHNSON, INC., et al.,

Defendants.

Case No. 4:23 CV 1408 CDP

## MEMORANDUM AND ORDER

This matter is before the Court on plaintiff The Wagner Agency's Motion to Show Cause Against Subpoena Respondent American Modern Property and Casualty Insurance Company, relating to a subpoena issued November 13, 2024, to non-party American Modern under Federal Rule of Civil Procedure 45. In the motion, Wagner seeks an Order 1) holding American Modern in contempt for failure to timely respond to the subpoena, 2) compelling American Modern to fully respond to the subpoena without objection, and 3) for recovery of its attorney's fees. A hearing was held on the motion on January 7, 2025. For the reasons stated on the record at that hearing, I will deny the motion in its entirety, but without prejudice to my retaining jurisdiction over disputes requiring Court resolution of substantive issues that may remain after Wagner and American Modern meet and confer in accordance with Local Rule 3.04(A) and are identified in a joint

memorandum to be filed with the Court in accordance with my instructions below.

Counsel for plaintiff Wagner and for non-party American Modern are directed to meet and confer in good faith not later than January 17, 2025, regarding the information sought by the subpoena at issue and to engage in sincere efforts to resolve any disputes relating to American Modern's production of documents as requested in the subpoena. To the extent any disputes may remain after those efforts, Wagner and American Modern shall file a joint memorandum with the Court, not exceeding 15 pages in length, briefly setting out with specificity the substance of the dispute, each side's position on the dispute, and citation to authority if any. The memorandum shall address the legal merits of each side's position; procedural posturing will not be tolerated. Wagner and American Modern shall also file a separate joint statement that complies in all respects with Local Rule 3.04(A), certifying that the meet-and-confer requirements of that Rule have been met. Because I intend to rule on the dispute(s) identified in the joint memorandum relating to the subpoena, separate motion practice is not permitted.

I will suspend the current deadline of January 17, 2025, by which to file motions to amend pleadings and/or to join parties and will permit the parties to file such motions within seven days of my ruling on the dispute(s) raised, if any, in the joint memorandum.


Accordingly,

**IT IS HEREBY ORDERED** that plaintiff The Wagner Agency's Motion to Show Cause Against Subpoena Respondent American Modern Property [58] is **DENIED** in its entirety, but without prejudice to the Court retaining jurisdiction over disputes requiring Court resolution of substantive legal issues identified in a joint memorandum filed in accordance with this Memorandum and Order.

**IT IS FURTHER ORDERED** that not later than Friday, January 17, 2025, counsel for plaintiff The Wagner Agency and for non-party American Modern Property and Casualty Insurance Company shall meet and confer in accordance with Local Rule 3.04 and the directives of this Order regarding the information sought in the Rule 45 subpoena issued November 13, 2024.

**IT IS FURTHER ORDERED** that if any substantive disputes remain after counsel meet and confer, not later than Friday, January 17, 2025, counsel for The Wagner Agency and American Modern Property and Casualty Insurance Company shall file a joint memorandum with the Court, not exceeding 15 pages in length, briefly setting out with specificity the substance of the dispute, each side's position on the dispute, and citation to authority if any. Counsel shall append to the joint memorandum a separate joint statement that complies in all respects with Local Rule 3.04(A), certifying that the meet-and-confer requirements of that Rule have been met.

**IT IS FURTHER ORDERED** that the current deadline of January 17, 2025, by which to file motions to amend pleadings and/or to join parties is **SUSPENDED** pending the Court's ruling on disputes identified in the joint memorandum, if any.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 8th day of January, 2025.